

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SPORTSWEAR COMPANY – S.p.A,

Plaintiff,

v.

abci, et al.,

Defendants.

UNDER SEAL

CIVIL ACTION NO.
1:22-CV-2119-JPB

**TEMPORARY RESTRAINING ORDER, ASSET FREEZE ORDER
AND ORDER TO SHOW CAUSE**

THIS CAUSE is before the Court on Plaintiff Sportswear Company – S.p.A.’s (“Plaintiff”) Motion for Ex Parte Temporary Restraining Order, Asset Freeze Order and Order to Show Cause (“Motion for TRO”) [Doc. 2] against Defendants abci, et al. (“Defendants,” named in the attached Exhibit A), pursuant to 15 U.S.C. § 1116, Rule 65 of the Federal Rules of Civil Procedure and Local Rule 65 of the Local Rules of the United States District Court for the Northern District of Georgia for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a). As discussed below, Plaintiff has satisfied the requirements for the issuance of an ex parte temporary restraining order and the additional relief requested.

I. APPLICABLE LEGAL STANDARDS

A court will issue a temporary restraining order where the requesting party demonstrates the following four factors: (1) it has a substantial likelihood of success on the merits; (2) the moving party will suffer irreparable injury if the order is not granted; (3) the threatened injury to the plaintiff outweighs the harm the relief would inflict on the non-movant; and (4) entry of the order would serve the public interest. Schiavo ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225–26 (11th Cir. 2005); Cathedral Art Metal Co. v. Divinity Boutique, LLC, No. 1:18-CV-141, 2018 WL 566510, at *4 (N.D. Ga. Jan. 26, 2018) (applying the four-part test and granting a preliminary injunction in a Lanham Act case).

Courts may issue a temporary restraining order without notice to the adverse party where the facts in an affidavit demonstrate the moving party will suffer immediate and irreparable injury, loss or damage before the adverse party can be heard in opposition, and the movant’s attorney certifies in writing why notice should not be required. Fed. R. Civ. P. 65(b)(1). Where a defendant’s identity is known and notice can be feasibly given, the court may still grant an ex parte seizure order if providing notice to the defendant would “render fruitless the further prosecution of the action.” AT&T Broadband v. Tech Commc’ns, Inc., 381 F.3d 1309, 1319 (11th Cir. 2004) (quoting In re Vuitton et Fils, S.A., 606 F.2d 1, 5

(2d Cir. 1979)). “The weight of authority around the country appears to favor the granting of *ex parte* seizure orders in trademark counterfeiting cases, where fake versions of well-known brands are deliberately passed off to the public as the genuine article.” Fimab-Finanziaria Maglificio Biellese Fratelli Fila S.p.A. v. Kitchen, 548 F. Supp. 248, 249 (S.D. Fla. 1982). The justification for an *ex parte* seizure order is even more compelling where a significant amount of evidence pertaining to the counterfeiting activity is in electronic form and therefore subject to quick, easy and untraceable destruction by the defendants. Dell Inc. v. BelgiumDomains, LLC, No. Civ. 07-22674, 2007 WL 6862341, at *2 (S.D. Fla. Nov. 21, 2007); see also Chanel, Inc. v. chanel255.org, No. 12-21762-CIV, 2012 WL 12845630, at *5 (S.D. Fla. May 17, 2012).

A request for permanent injunctive relief and disgorgement of Defendants’ profits from counterfeiting pursuant to 15 U.S.C. § 1117 as well as a request for an award of attorney’s fees are requests for relief in equity. Requests for equitable relief invoke the court’s inherent equitable powers to order preliminary injunctive relief, including an asset freeze, to assure the availability of permanent relief. Levi Strauss & Co. v. Sunrise Int’l Trading Inc., 51 F.3d 982, 987 (11th Cir. 1995). Such asset freezes are particularly appropriate against sellers of counterfeit goods who are likely to hide their ill-gotten profits if their assets are not seized. Reebok



Int'l, Ltd. v. Marnatech Enters., Inc., 970 F.2d 552, 559 (9th Cir. 1992).





II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court, having reviewed Plaintiff's Motion, Memorandum and supporting declarations and evidence, makes the following findings of facts and conclusions of law:

A. Plaintiff's Trademarks

- 1) Plaintiff manufactures and distributes premium men's and junior's luxury sportswear garments and accessories, including but not limited to outerwear, knitwear, shirts, pants, footwear and bags under the well-known STONE ISLAND trademarks.
- 2) Plaintiff has adopted, used and/or registered several trademarks in connection with its products, including the following ("Plaintiff's Marks"):

Mark	U.S. Federal Reg. Nos.
STONE ISLAND	2706733
	4500017
	1370214

Mark	U.S. Federal Reg. Nos.
	<p>3707866 3496280</p>
	<p>3520867</p>
	<p>5706359</p>
	<p>5958392</p>

B. Defendants' Advertising and Sale of Counterfeit and Infringing Goods

- 3) Defendants are foreign distributors and resellers of a variety of goods.

Defendants advertise and sell their goods through online marketplaces such as Alibaba, AliExpress, DH Gate, Amazon, eBay, Joom and/or Wish ("Marketplaces").

- 4) Defendants offer to sell and offer to ship their goods to buyers located in the United States, including in this judicial district.
- 5) Defendants accept payment for their goods in U.S. dollars through a variety

of U.S.-based payment processors and financial institutions, including AliPay, DHPay, PayPal and ContextLogic (“Financial Institutions”).

- 6) Plaintiff has demonstrated that it is likely that the evidence will show Defendants are advertising and offering for sale goods using or bearing counterfeit copies of at least one of Plaintiff’s Marks, are using a counterfeit of at least one of Plaintiff’s Marks in their listings for non-genuine copies of Plaintiff’s goods or are using a confusingly similar trademark to one of Plaintiff’s Marks in the marketing and sale of their goods (“Counterfeit Products”) through their virtual storefront(s) on the Marketplaces.
- 7) Defendants have sold and shipped, and/or are willing to sell and ship, Counterfeit Products to customers in the United States, including in this judicial district.
- 8) Defendants are subject to the personal jurisdiction of this Court pursuant to Fed. R. Civ. P. 4(k)(2), and exercising jurisdiction over Defendants is consistent with the United States Constitution and its laws. Based on the facts set forth above, it is reasonable for Defendants to expect that they may be sued in the United States. SEC v. Carrillo, 115 F.3d 1540, 1542–47 (11th Cir. 1997) (holding that the court had personal jurisdiction over a foreign corporation where the defendant placed ads for securities in two airlines’ in-

flight magazines, mailed offering materials directly to U.S. investors and maintained U.S. bank accounts to receive payment from investors); Louis Vuitton Malletier, S.A. v. Mosseri, 736 F.3d 1339, 1355–58 (11th Cir. 2013) (affirming jurisdiction over non-resident who sold counterfeit products through fully-interactive website).

- 9) Plaintiff has demonstrated that after a reasonable opportunity for further investigation and discovery, it is likely that the evidence will show that Defendants obtain the Counterfeit Products from the same manufacturers, share building space and/or personnel with manufacturers and are directly related to the manufacturers and/or each other and therefore form a chain of distribution of these Counterfeit Products. All parties to a chain of distribution of counterfeit products are jointly liable. Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distribs. Pty. Ltd., 647 F.2d 200, 207 (D.C. Cir. 1981) (stating that in “copyright infringement cases, any member of the distribution chain can be sued as an alleged joint tortfeasor”); BRS, Inc. v. Volume Shoe Corp., No. C81-1281A, 1982 WL 52210, at *7 (N.D. Ga. June 28, 1982). Thus, such evidence would make joinder of Defendants appropriate under Fed. R. Civ. P. 20(a)(2).
- 10) Plaintiff has never authorized Defendants to use any of Plaintiff’s Marks in

the advertising, promotion or sale of any goods in the United States.

- 11) Plaintiff has established that the Counterfeit Products offered for sale by Defendants are not genuine and that Defendants are using one or more of Plaintiff's Marks on or in connection with the advertising and promotion of their Counterfeit Products.
- 12) Plaintiff has established that it is substantially likely to succeed on the merits of its trademark infringement claims:
 - a) Plaintiff owns valid federal trademark registrations for Plaintiff's Marks;
 - b) The Counterfeit Products that Defendants are advertising and offering for sale are not genuine;
 - c) Defendants are using spurious marks that are identical with, or substantially indistinguishable from, one or more of Plaintiff's Marks in commerce on or in connection with the advertising, offering for sale and/or sale of the Counterfeit Products; and
 - d) This use of Plaintiff's Marks on or in connection with the advertising and sale of Counterfeit Products is likely to cause consumer confusion, mistake or deception as to the source or origin of the Counterfeit Products.

- 13) Plaintiff has shown that it is likely to suffer irreparable harm if an injunction does not issue. The Counterfeit Products are of inferior quality to Plaintiff's genuine goods, misleading consumers as to the true quality of Plaintiff's products and causing consumer confusion, mistake and deception, all to the detriment of Plaintiff's goodwill. The continued sale of the Counterfeit Products threatens Plaintiff with the loss of control over its reputation and loss of the considerable goodwill it has established with customers. Moreover, Plaintiff has established that Counterfeit Products typically do not meet applicable product safety or labeling requirements. This is more than sufficient to establish a likelihood of irreparable harm. Ferrellgas Partners, L.P. v. Barrow, 143 F. App'x 180, 190–91 (11th Cir. 2005) (“[T]he most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control and nature and quality of the defendants' goods.” (alteration in original) (quoting Int'l Kennel Club of Chi., Inc. v. Mighty Star, Inc., 846 F.2d 1079, 1092 (7th Cir. 1998))); Crossfit, Inc. v. Quinnie, 232 F. Supp. 3d 1295, 1316 (N.D. Ga. 2017).
- 14) It is likely that Plaintiff and consumers who purchase Defendants' Counterfeit Products will suffer immediate and irreparable loss, damage or injury unless Plaintiff's request for ex parte relief is granted:

- a) It is likely that Defendants will continue to sell counterfeit and infringing goods through their e-commerce Marketplace storefronts in the absence of the requested TRO;
 - b) As a result, it is likely that consumers will continue to be misled, confused and disappointed by the quality of these products, thereby significantly and irreparably damaging Plaintiff's valuable goodwill; and
 - c) Finally, Plaintiff will continue to suffer lost sales of genuine products as the result of the lower-cost Counterfeit Products offered for sale by Defendants.
- 15) The balance of harms favors Plaintiff. If Plaintiff is required to provide Defendants notice of the Application for TRO or if the TRO is denied, Defendants will be able to shut down their Marketplace storefronts, transfer their ill-gotten gains away from the Marketplaces and otherwise take steps to hide their infringing conduct and prevent Plaintiff from obtaining meaningful relief. In contrast, if the Court grants the requested ex parte TRO, Defendants will be prohibited from continuing to advertise, offer for sale and sell Counterfeit Products to consumers in the United States and may be required to disgorge their ill-gotten gains from the past sale of such

Counterfeit Products, neither of which constitutes any substantial harm.

- 16) Plaintiff has further demonstrated that this TRO should be granted ex parte to avoid giving Defendants an opportunity to destroy relevant evidence, much of which is in electronic form. If Plaintiff gives Defendants notice of its Application for TRO, Defendants are likely to delete their existing online e-commerce Marketplace storefronts, transfer any ill-gotten gains away from the Marketplaces and otherwise hide their identities, cover up evidence of their infringing activities and shield their ill-gotten assets in an effort to avoid liability and prevent Plaintiff from achieving a meaningful recovery, including financial compensation and permanent injunctive relief. Foreign parties that sell Counterfeit Products often “disappear” when notified that their conduct is unlawful, only to set up a new online storefront under a new identity, with new financial accounts.
- 17) Granting Plaintiff an ex parte TRO will also be in the public’s interest. It will remove from the stream of commerce counterfeit and infringing goods that do not meet Plaintiff’s quality control requirements, thereby preventing further consumer confusion, mistake or deception.
- 18) Plaintiff has requested a permanent injunction and recovery of Defendants’ ill-gotten profits from their sale of Counterfeit Products pursuant to 15

U.S.C. § 1117(a).

- 19) By requesting equitable relief, Plaintiff has invoked this Court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief. Levi Strauss & Co., 51 F.3d at 987.
- 20) Defendants are likely to destroy evidence of their counterfeiting activities—including their electronic storefronts, payment histories and accounts with financial institutions—or hide or transfer any ill-gotten proceeds from the sale of Counterfeit Products outside of the jurisdiction of this Court, unless those assets are frozen or otherwise restrained.

In light of the foregoing, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's Motion for Temporary Restraining Order [Doc. 2] is **GRANTED** as follows:

- 1) Each Defendant (as reflected on the attached Exhibit A), its officers, directors, employees, agents, subsidiaries, distributors and all persons in active concert or participation with any Defendant having notice of this Order are hereby ordered to temporarily:
 - a) Cease or refrain from manufacturing, advertising, offering for sale, selling, distributing, destroying, selling off, transferring or

otherwise disposing of any Counterfeit Products;

- b) Cease or refrain from manufacturing, advertising, offering to sell, selling, reproducing or distributing any products bearing Plaintiff's Marks or any confusingly similar trademarks, other than genuine products manufactured or distributed by Plaintiff or its authorized manufacturers and distributors; and
- c) Cease or refrain from destroying, selling off, transferring or otherwise disposing of any documents, electronically stored information or financial records or assets of any kind, relating to the manufacture, importation, sale, offer for sale, distribution or transfer of any Counterfeit Products;
- d) Cease or refrain from using Plaintiff's Marks, or any confusingly similar trademarks, on or in connection with any virtual storefront that Defendants may own, operate or control on any Marketplace;
- e) Cease or refrain from any and all use of Plaintiff's Marks, or any confusingly similar trademarks, as metatags on any webpage (including the title of any web page), in any advertising links to other websites, from search engines'

databases or cache memory and any other form of use of such terms that are visible to a computer user or serves to direct computer searches to virtual storefronts registered by, owned by or operated by Defendants on any Marketplace; and

f) Cease or refrain from altering, disabling, closing or transferring ownership of any virtual storefront on any Marketplace during the pendency of this Action, or until further order of the Court.

- 2) For the duration of this suit, each Defendant must preserve all documents and electronically stored information arising from or related to its sale, offering for sale, advertising or promotion of Counterfeit Products through its virtual storefronts located on the Marketplaces.
- 3) All financial institutions, payment processors, banks, escrow services, money transmitters and Marketplaces, including but not limited to: PayPal, Inc. (“PayPal”); Ant Financial Services Group d/b/a AliPay and AliPay US, Inc.(“AliPay”); DHPay Inc. (“DHPay”); Camel FinTech, Inc. (“Camel FinTech”); ContextLogic, Inc. (“ContextLogic”); or any other companies that engage or have engaged in the processing or transfer of money of or on behalf of any Defendants by virtue of their operation of virtual storefronts on any of the Marketplaces; and their related companies and

affiliates who receive actual notice of this Order shall:

- a) Immediately attach and freeze all funds in any accounts owned, controlled or utilized by, or associated with Defendants, or otherwise prohibit the transfer of any funds out of any such accounts, and divert any frozen funds and any additional funds that may be transferred into the accounts into a holding account for the trust of the Court, with such frozen funds and/or holding accounts being held, maintained and/or located exclusively within the United States.
- 4) Within seven days of receiving actual notice of this Order, all Marketplaces and Financial Institutions and their related companies and affiliates shall provide a report to Plaintiff for each Defendant having any account with the Marketplace or Financial Institution, the report to include, at minimum, the following:
 - a) Legal name, email address and physical address of each Defendant;
 - b) Current account balances and amount of funds attached, frozen and being held in trust pursuant to this Order; and
 - c) Identity of all accounts linked to or associated with each of

Defendants' accounts, or from or to which funds have been transferred from the attached accounts, including the name of the financial institution, account numbers, routing numbers or beneficiary institutions.

- 5) No funds restrained by this Order shall be transferred or surrendered by any Financial Institution or Marketplace for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of the Court.
- 6) Upon receipt of notice of this Order, each Marketplace (including, but not limited to, Alibaba, AliExpress, DH Gate, Amazon, Wish, eBay, Joom or any other platform hosting virtual storefronts for any Defendants) at which a Defendant maintains a storefront or account is ordered to immediately:
 - a) Provide to Plaintiff the name, email address and physical address of each Defendant having an account or store with the platform;
 - b) Freeze all funds held or received by the Marketplace for Defendants' benefit; and
 - c) Disable the Marketplace storefront or account associated with each Defendant and cease providing any services to Defendants.

- 7) Plaintiff may notify the Marketplaces and Financial Institutions of this Order by electronic means, including by electronic mail with delivery confirmation.
- 8) This Order shall apply to Defendants, associated e-commerce Marketplace storefronts and any other websites, domain names, seller identification names, e-commerce stores or Financial Institution accounts which are being used by Defendants for the purpose of advertising, offering for sale and selling any of the Counterfeit Products at issue in this action and/or unfairly competing with Plaintiff.
- 9) Any Defendant or Financial Institution account holder may petition the Court to modify the asset restraint set out in this Order.
- 10) A hearing by video conference is set before this Court, technical details to follow, on **June 10, 2022, at 9:30 AM**, at which time Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same, shall provide a reasonable estimate of their potential lost sales with supporting documentation and requested bond amount and shall appear and show cause why a preliminary injunction should not issue, at which time the Court will hear argument on Plaintiff's requested preliminary injunction.

- 11) **SERVICE BY ALTERNATE MEANS:** After Plaintiff's counsel has received confirmation that the Financial Institutions have restrained Defendants' funds as directed herein, Plaintiff shall serve copies of the Complaint, Application for Temporary Restraining Order and this Temporary Restraining Order on each Defendant as follows:
- a) Attached to a message sent to Defendants through a Marketplace messaging system where possible;
 - b) As a download link sent to Defendants through a Marketplace messaging system; or
 - c) By electronic mail with delivery confirmation using email addresses provided by the Marketplaces, Financial Institutions or Defendants themselves.
- 12) Additionally, for the purpose of providing additional notice of this proceeding and all other pleadings, orders and documents filed herein, the owners or operators of the Marketplaces and Financial Institutions, including related entities and/or financial institutions, payment processors, bank, escrow services and/or money transmitters, shall, at Plaintiff's request, provide Plaintiff's counsel with all names, physical addresses, phone numbers and electronic mail address associated with Defendants.


13) Any response or opposition to Plaintiff's Motion for Preliminary Injunction must be filed and served on Plaintiff's counsel by **June 3, 2022**, and filed with the Court, along with Proof of Service. Plaintiff shall file any reply memorandum prior to the hearing set for **June 10, 2022**. The above dates may be revised upon stipulation by all parties and approval of this Court.

Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Federal Rule of Civil Procedure 65, 28 U.S.C. § 1651(a) and the Court's inherent authority.

14) Plaintiff is ordered to remit a bond in the amount of \$10,000 within seven days of this Order.

This Temporary Restraining Order expires within fourteen days unless extended for good cause.

SO ORDERED this 27th day of May, 2022.



J. P. BOULEE
United States District Judge

EXHIBIT A

LIST OF ALL NAMED DEFENDANTS SUBJECT TO ORDER

abci	fashion0513
abcq	fashioncity02
abez	fashionclothes_1202
airik	fb0312
aiyueele01	finder66
aiyueele07	foreveryuisdfg
aiyueele08	fuchengtech
beautgirl	fuzetech
benana	fzcfhxhunter
bluetooth2004	fzcta0
boyun2021	fzcta3
clyyy	fzctc3
carters1	fzctc8
chengfugood	fzctc88
chinanewtrends1	fzctd2
clothing1989	fzctd6
clothingsuppliera	fzcti2
cmqwo287pc	fzcti6
cngarden	fzctj5
cosmos_fz	fzctk0
cycinternational	fzctm3
cycvaporstore	fzctn3
cyx96422	fzctq33
daruila	fzctr1
denise01	fzctr01
designer_coat	fzctu2
dhbags1988	fzl0307
dhmerchs	gicux429cb
dhnetwen	gld6606
diamondring	goodfu
dm619	goodluckids
ebey1113	goose_vip01
elsagirl	grose
fali2	haiyigood

haomingrui
 helay2021
 hfc918
 hiboys
 high_end01
 highsellers
 hkfuzecheng02
 hkfuzecheng03
 hkfuzecheng04
 honglongele02
 hxy1979
 illusory001
 instock_9999
 jamie001
 jcins
 jessup
 jianyitech
 jiazhu
 jieacc2022
 jinruiele
 kaiercc
 keneo
 ksw124
 like2018
 lin19878
 lin19879
 ling589
 lingshi01
 lingyi01
 ljp308
 lqy802
 lulu20000
 luluclothing
 lurang
 lx11124
 lxx100
 lz_brand_clothing
 madvapors

mavns503zn
 mike22118
 mlq006
 Monclair Jacket
 mouling
 nanping1318
 nanyizhixin
 new designers t shirts mens
 no1_cartongate
 ogcct97tt
 okshoes1
 onestopwholesale
 parislove2020
 podstores
 popular01clothing
 qd688
 quddv2317gx
 quzhipeng001
 ruijia2021
 sanlingge
 shenzhen2058
 skystate
 slippers588
 sly1216
 sqcsj9767kk
 Stone Island Man
 stone_island_coat
 stoneislandmoncler
 stussyboy
 sup166
 syctradinginc
 t shirt
 tiling
 tongda2018
 top_puffplus
 Topstoney
 toptruman
 tyk621

uuugx1180aa
vander
w1964812
wang19911001
wangliang001
weilan2021
weyou
wfq001
wholesalecap01
wodeu7iop
wuwensong05
wzh733
xie633
xinfu2021
xinhaodeng
xinshidandan
xlgzr9375bs
xq001
yg923
yhq01
yifantech2021
yihai2021
youyib2
youyig2
youyig4
youyih6
youyip0
youyiq3
youyis1
youyis7
youyiv3
yuanyiweisio
yuekai
yume77
zhengfeier888
zjj888
zucrk5563tt
zxcvb1989

zxj001
zy00001